

(2) The eligible entity will acquire, hold, manage, and enforce the easement. The eligible entity may have the option to enter into an agreement with governmental or private organizations to carry out easement stewardship responsibilities if approved by NRCS;

(3) Prior to closing, NRCS must sign an acceptance of the conservation easement, concurring with the terms of the conservation easement and accepting its interest in the conservation easement deed;

(4) All conservation easement deeds acquired with GRP funds must be recorded in the appropriate land records. Proof of recordation will be provided to NRCS by the eligible entity; and

(5) The conservation easement deed must include an indemnification clause requiring the participant (grantor) to indemnify and hold harmless the United States from any liability arising from or related to the property enrolled in GRP.

**§ 1415.18 Easement transfer to eligible entities.**

(a) NRCS may transfer title of ownership to an easement to an eligible entity to hold and enforce an easement if:

(1) The Chief determines that transfer will promote protection of grassland, land that contains forbs, or shrubland;

(2) The owner authorizes the eligible entity to hold and enforce the easement; and

(3) The eligible entity agrees to assume the costs incurred in administering and enforcing the easement, including the costs of restoration or rehabilitation of the land as specified by the owner and the eligible entity, and the entity assumes responsibility for enforcing the GRP management plan or conservation plan, as applicable, as approved by NRCS.

(b) NRCS has the right to conduct periodic inspections to verify the eligible entities enforcement of the easement, which includes the terms and requirements set forth in the GRP management plan and any associated restoration or conservation plan for any easements transferred pursuant to this section.

(c) An eligible entity that seeks to hold and enforce an easement will

apply to the NRCS State Conservationist for approval.

(d) The Chief may approve an application if the eligible entity:

(1) Has relevant experience necessary, as appropriate for the application, to administer an easement on grassland, land that contains forbs, or shrublands;

(2) Has a charter that describes the commitment of the eligible entity to conserving ranch land, agricultural land, or grassland for grazing and conservation purposes;

(3) Possesses the human and financial resources necessary, as determined by the Chief, to effectuate the purposes of the charter;

(4) Has sufficient financial resources to carry out easement administrative and enforcement activities;

(5) Presents proof of a dedicated fund for enforcement as described in § 1415.17(b)(5), if the entity is a non-governmental organization; and

(6) Presents documentation that the landowner has concurred in the transfer.

(e) The Chief or his or her successors and assigns, will retain a right of enforcement in any transferred GRP funded easement, which provides the Secretary the right to inspect the easement for violations and enforce the terms of this easement through any and all authorities available under Federal or State law, in the event that the eligible entity fails to enforce the terms of the easement, as determined by NRCS.

(f) Should an easement be transferred pursuant to this section, all warranties and indemnifications provided for in the deed will continue to apply to the United States. Upon transfer of the easement, the easement holder will be responsible for enforcement of the GRP management plan, as approved by NRCS, and implementation of any associated conservation or restoration plans and costs of such restoration as agreed to by the landowner and entity.

(g) Due to the Federal interest in the GRP easement, GRP-funded easements cannot be condemned.

**§ 1415.19 Appeals.**

(a) Applicants or participants may obtain a review of any administrative

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determination concerning eligibility for participation utilizing the administrative appeal regulations provided in parts 614 and 780 of this title.

(b) Before a person may seek judicial review of any administrative action concerning eligibility for program participation under this part, the person must exhaust all administrative appeal procedures set forth in paragraph (a) of this section, and for the purposes of judicial review, no decision will be a final agency action except a decision of the NRCS Chief or the FSA Administrator, as applicable, under these procedures.

(c) Any appraisals, market analysis, or supporting documentation that may be used by NRCS in determining property value are considered confidential information, and will only be disclosed as determined at the sole discretion of NRCS in accordance with applicable law.

(d) Enforcement actions undertaken by NRCS in furtherance of its Federally held property rights are under the jurisdiction of the Federal District Courts and are not subject to review under administrative appeal regulations.

### § 1415.20 Scheme or device.

(a) If it is determined by USDA that a participant has employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid to such participant during the applicable period may be withheld or be required to be refunded with interest thereon, as determined appropriate by USDA.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person of payments for cost-share practices, rental contracts, or easements for the purpose of obtaining a payment to which a person would otherwise not be entitled.

(c) A participant who succeeds to the responsibilities under this part will report in writing to USDA any interest of any kind in enrolled land that is held by a predecessor or any lender. A failure of full disclosure will be considered a scheme or device under this section.

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### PART 1416—2006 EMERGENCY AGRICULTURAL DISASTER ASSISTANCE PROGRAMS

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